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(W)

April 24, 1997

Gayla Sessions  
FOIA/Privacy Act Division  
1000 Independence Ave, SW  
Washington, DC 20585

OTHER - 2 HOURS MAY - 5 A 11:51  
NATIONAL ARCHIVE FREE 100 FREE PAGES  
U.S. DEPT. OF ENERGY  
ES

RE: Freedom of Information Act Request

Dear Gayla Sessions,

I am the chairperson for the Ohio chapter of National Advocates for Beryllium Education and Reform (NABER) of the Ramazzini Institute for Occupational and Environmental Health Research, in Solomons, Maryland. We are a nonprofit organization comprised of workers with Chronic Beryllium Disease (CBD), beryllium sensitized workers, and spouses. NABER is requesting the following information under the Freedom of Information Act (FOIA).

First:

In 1986/87 several individuals who had worked for the Brush Beryllium Corporation in the Cleveland, Ohio area wrote to the DOE (usually Mary Walker), requesting information regarding the DOE beryllium medical monitoring and surveillance program of beryllium workers. The requests were made by workers, as well as family members of workers. From the copies of worker/family letters that I have, it appears that the requests were referred to Danny Sheppard for action. Some may also have been sent to the Medical and Health Sciences Division at Oak Ridge. TN.

I am requesting copies of:

1. Responses that the DOE sent to the Brush Beryllium workers (or their families), regarding the beryllium monitoring program.
2. Any and all internal correspondence related to the requests made by the workers.
3. DOE responses to workers/families regarding the beryllium monitoring program beyond the 1986/87 time frame (if there were any).

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Second:

My second request is for information regarding indemnification for Brush Wellman by the government from the 1940's to the present. The following information may help in the search for information surrounding indemnification.

In a letter dated 1/17/89, from Jones, Day, Reavis, & Pogue to The Honorable Donna Fitzpatrick, Brush Wellman's counsel (Randall E. Davis), makes reference to "recently" having "been indemnified by the government in an action arising out of its supply of beryllium-containing products to a DOE facility. The letter also requests indemnification against "future..., lawsuits if claims are made against it for exposure to beryllium at DOE facilities." DCC

I am requesting the following information:

4. Information related to the "recently" indemnification referred to by Jones, Day in the 1/17/89 letter. The information may be found within the Office of Management and Budget (OMB), DOE, Justice Department and others. Please include internal DOE correspondence, correspondence with sources external to the DOE, and correspondence between Brush Wellman and the DOE. Also, include a copy of the agreement.

5. Information related to Brush Wellman's request for indemnification on 1/17/89 against future lawsuits. Please include internal DOE correspondence, correspondence with external sources, and with Brush Wellman and/or their representatives. Also, include a copy of the agreement.

In a 1986 10K filing with the Securities and Exchange Commission Brush Wellman reports that "The Company [Brush Wellman, Inc.] has served notice on the US Government because the alleged exposures occurred in a period covered by a Government contract containing an indemnity clause against such claims." The suit was filed by Jeanne Cook, widow of G.H. Cook, in the Court of Common Pleas of Cuyahoga county, Ohio on February 22, 1985.

I am requesting the following:

6. A copy of any and all contracts between the U.S. Government and Brush Wellman, Inc. (formerly the Brush Beryllium Corporation), in which there is an indemnification clause.

7. Any and all correspondence related to indemnification within government contracts between the U.S. Government and Brush Wellman, Inc. (formerly the Brush Beryllium Corporation).

Pursuant to provisions of the Freedom of Information Act and Title 10, code of Federal Regulations, Section 1004.9 of the DOE regulations, I also request that search and copy fees be waived because:

- \*Beryllium disease is a subject of current public interest;

- \*our membership consists of individuals with beryllium disease and their families, as such, the information is of particular interest to us;

- \*as a nonprofit organization we are committed to educating ourselves and others about beryllium disease, and search and copy fees exceed our budget.

- \*we (workers and families) are the victims of beryllium disease, and as such have a compelling interest in learning as much as possible about the social and historical context of beryllium disease;

- \*our costs, due to beryllium, have been substantial when our health, economic status, and familial distress are taken into account.

Further, the fee waiver is consistent with the Assistant Attorney General's January 7, 1983 memorandum, in that there is a compelling public interest, as indicated by the following:

- \*NIOSH estimates from the 1970s suggest that as many as 800,000 workers may be exposed to beryllium; recent developments of beryllium in the private sector suggest there may be even more workers at risk than at earlier times.

- \*Public awareness of the dangers of beryllium exposure is one good way to work toward eliminating a costly, debilitating, and ultimately preventable disease.

If you need further clarification of the FOIA request, please do not hesitate to contact us.

Sincerely,



David J. Norgard  
NABEP

PO Box 55  
Oak Harbor, Ohio 43449  
Phone 419-898-8825